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IS THIS LIBEL? — MORE ABOUT PRIVACY. — A tutor tried for the murder of his pupil shot in the back, large amounts of insurance on the life of the man killed in favor of the wife of the tutor, and curious holes in boats which the pupil might have used, recently furnished the materials for a *cause célèbre*, in Scotland, the Ardlamont Case, in which the charge against the defendant, Mr. Alfred John Monson, was found "not proven." Mme. Tussaud very naturally put up an effigy of Mr. Monson, and Louis Tussaud at Birmingham did the same. In London he was placed just within the turnstile where one pays 6*d.* to see the Chamber of Horrors, which is reached by descending a staircase, from the room where Mr. Monson keeps company with Pigott, Scott (a mysterious person also concerned in the Ardlamont case), Mrs. Maybrick, and relics and pictures of Napoleon. The Chamber of Horrors contains a representation of the "Scene of the Ardlamont Mystery." At Birmingham, with either more politeness or more caution, he was placed opposite His Grace of Canterbury and Prince Bismarck, and between the Royal Family and a group containing the Pope and Cardinals Vaughan and Logue, but in the advertisements his neighborhood was less pleasant; for the public were invited to "see Vaillant, the Anarchist, and Monson, of Ardlamont."

Not satisfied with the experience of the law which he had already had, Mr. Monson sought injunctions preliminary to the trial of libel suits for these indignities, and got them from the Divisional Court, Matthew and Collins, JJ. (10 Times L. R. 199.) On trial of the appeal, however, new evidence pointed toward extraordinary conduct on the part of Mr. Monson, for it appeared that, not content with publishing a pamphlet about his case, and advertising to deliver lectures on the subject, he had probably let a confidential friend offer to the proprietors of Mme. Tussaud's to supply them with "the clothing and the gun which Mr. Monson was using at the time of Lieut. Hambrough's death" and "a sitting by Mr. Monson to assist the portrait modeller." (10 Times L. R. 227.) It being the practice of the English courts not to give an injunction against libels, unless in clear cases, action in favor of the plaintiff was after this out of the question. But for these reasons we have the opinions of five judges on the questions raised by the case, Collins and Matthew, JJ., below, and Lord Halsbury and Lopes and Davey, L. JJ., above; and of these last only Davey, L. J., resisted the temptation to go beyond the new evidence which settled the matter and discuss the whole case.

It was attempted more or less successfully to treat the cases as raising purely questions of libel, neither counsel nor court meaning apparently to go beyond this, and as the effigy seems to have been considered not libellous *per se*, the discussion, apart from the new evidence, turned upon the consideration of the innuendoes. If the defendant meant that Mr. Monson had committed a murder (and the jury might well be allowed to give this such a meaning, *Broom v. Gosden*, 1 C. B. 728; *Patch v. Tribune Association*, 38 Hun, 368), undoubtedly the representation was libellous; but had the plaintiff a case which justified injunction? Collins and Matthew, JJ., and Lord Halsbury thought that he had. Lopes, L. J., dissented from this view, and Davey, L. J., expressed no opinion. Taking into consideration the whole circumstances of the case, one could fairly say that, if this was the innuendo and if it were false, the representation was calculated to bring the plaintiff into hatred, ridicule, and contempt; but it seems that it would be equally fair to say that it is doubtful whether, considering that at the trial any mild innuendo would be op-

posed by a defence of truth, and any direct one, such as this, difficult of proof, there was here a case for the court to undertake the very delicate task of enjoining a libel, and it is perhaps more than doubtful whether, if solely this aspect of the case had been before the court, there would have been shown any such willingness to grant the injunction.

But the chief interest of the case is brought into it by the fact that it borders so closely upon the law of Privacy that counsel and court, alike, seeking to discuss only the question of libel, let fall again and again expressions which show most clearly that a large part of the plaintiff's real case is that, whatever the circumstances may be, it is outrageous to allow a wax-work figure of a person, who is not a public character, to be exhibited in a place like Tussaud's, without the consent of the person thus pilloried. North, J., in *Pollard v. Photographic Co.*, 40 Ch. D. 345, stated the difficulty squarely when he asked counsel, whether one could exhibit and sell copies of a photographic negative taken on the sly. He was answered that there would then be no trust, or confidence, or implied contract, and so no right to stop such a sale; but, as has already been pointed out in the REVIEW, the weakness of courts for hiding judicial legislation under such implications has brought them substantially to a point where the implication is one of law and the contract fictitious. Only in phraseology does this differ from a right of privacy. Whether Mr. Monson's pamphlet, his offers of lecturing, and the like, may not be taken to be a submission of the question to the public, and whether he may deny the public a right to see representations of the scene of the tragedy, and his picture, or effigy, when he is foolish enough thus to drag before it the history of the whole case, are questions which might of course be raised, if his right were squarely considered upon these grounds. But counsel and court slip rather than step into such considerations. "Suppose," says Coleridge, Q. C., "you burnt a man in effigy. I submit that you could not bring evidence to show that he was in fact a ridiculous person. . . . There is a great distinction between a public and a private man." Later Collins, J., asked him, "You say it is impossible to exhibit a man of bad character without a libel?" "Yes," was the answer, "when the object is to gratify the public curiosity by the exhibition." And Lord Halsbury launches this well-merited invective against the people who refuse to let others alone. "Is it possible to say that everything which has once been known may be reproduced with impunity in print or picture,— every incident of a criminal or other trial be produced and its publication justified; and not only trials, but every incident which has actually happened in private life, furnish material for an adventurous exhibitor, dramatized perhaps, and justified, because, in truth, such an incident did really happen?" When counsel and court see the justice of the plaintiff's case in such a light, even if Coleridge, Q. C., says that he treats it as "substantially . . . a case of ordinary libel," outsiders may fairly ask: is this libel? Or is it an inarticulate recognition of the tendency to extend the rights of the person to cover the case of unwarranted and unauthorized representations?